U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 18 2004

IN RE: Petitio[redacted]
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PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(C)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, approved the employment-based visa petition. Subsequently, the beneficiary applied for adjustment of status. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with Notice of Intent to Revoke the approval of the preference visa petition, and his reasons therefore, and ultimately denied the petition on April 23, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation organized in the State of California in July 1994. It imports and exports goods. It seeks to employ the beneficiary as its president. Accordingly, the petitioner endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director initially approved the petition. Upon review of the record in conjunction with the beneficiary's adjustment of status interview, the director requested further evidence demonstrating that the beneficiary was and would be eligible for the benefit sought. Upon receipt of information from the petitioner and an overseas investigation, the director properly issued a Notice of Intent to Revoke on February 22, 2002. The director observed that the record contained inconsistencies regarding the petitioner's qualifying relationship with the beneficiary's foreign employer. The director also observed that the record did not establish that the beneficiary would be employed in a primarily managerial or executive capacity. The petitioner submitted documents and argument in rebuttal to the Notice of Intent to Revoke. The director did not find the evidence the petitioner submitted credible and determined that the petitioner had not established a qualifying relationship with the foreign entity. The director also determined that the record did not demonstrate that the beneficiary's position would be primarily executive or managerial. The director issued his Notice of Decision on April 23, 2003. This appeal followed.

On appeal, counsel for the petitioner asserts that sufficient evidence has been submitted to show that the foreign company is the parent company of the petitioner. Counsel also contends that sufficient evidence has been submitted to demonstrate that the beneficiary is playing a managerial role for the petitioner.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any

evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

The record in this matter warranted a denial of the visa petition based upon the petitioner's failure to meet his burden of proof.

Section 203(b) of the Act states in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The language of the statute is specific in limiting this provision to only those executives and managers who have previously worked for the firm, corporation or other legal entity, or an affiliate or subsidiary of that entity, and are coming to the United States to work for the same entity, or its affiliate or subsidiary.

A United States employer may file a petition on Form I-140 for classification of an alien under section 203(b)(1)(C) of the Act as a multinational executive or manager. No labor certification is required for this classification. The prospective employer in the United States must furnish a job offer in the form of a statement that indicates that the alien is to be employed in the United States in a managerial or executive capacity. Such a statement must clearly describe the duties to be performed by the alien. *See* 8 C.F.R. § 204.5(j)(5).

The first issue in this proceeding is whether the beneficiary has established a qualifying relationship with the beneficiary's foreign employer. In order to qualify for this visa classification, the petitioner must establish that a qualifying relationship exists between the United States and foreign entities in that the petitioning company is the same employer or an affiliate or subsidiary of the foreign entity.

The regulation at 8 C.F.R. § 204.5(j)(2) states in pertinent part:

[redacted]

Affiliate means:

(A) One of two subsidiaries both of which are owned and controlled by the same parent or individual;

(B) One of two legal entities owned and controlled by the same group of individuals, each individual owning and controlling approximately the same share or proportion of each entity.

Multinational means that the qualifying entity, or its affiliate, or subsidiary, conducts business in two or more countries, one of which is the United States.

Subsidiary means a firm, corporation, or other legal entity of which a parent owns, directly or indirectly, more than half of the entity and controls the entity; or owns, directly or indirectly, half of the entity and controls the entity; or owns, directly or indirectly, 50 percent of a 50-50 joint venture and has equal control and veto power over the entity; or owns, directly or indirectly, less than half of the entity, but in fact controls the entity.

In a November 5, 1998 letter accompanying the petition, counsel for the petitioner indicated that [redacted] roducts Co. [redacted] had registered the petitioner in 1994. Counsel referred to [redacted] the petitioner's parent company. Counsel also indicated that the petitioner was called "CML Enterprises, Inc." and "T.P.I. Merchandising, Inc." Counsel referred to registration documents attached as exhibits to the petition, however, those specific exhibits cannot be identified in the record.

The director in the Notice of Intent to Revoke raised several concerns regarding this issue. The director observed that the beneficiary had made several wire transfers to the petitioner in January 1997. The director also noted that a third party, [redacted] of China had transferred money to the petitioner in April 1996. The director noted that the petitioner had provided copies of stock certificate #1 and stock certificate #2 evidencing its issuance of 800 shares to [redacted] and 100 shares to [redacted] both in July of 1994. The director pointed out that the stock ledger showed only one stock certificate issued to [redacted] in December 1996 and that the stock certificate was for 900 of the petitioner's shares for the payment of $90,000. The director also pointed out that the dates on the stock certificates did not coincide with the dates of the money transferred to the petitioner by the beneficiary and the third party company.

The director determined that the documentation in the record was not sufficient to establish [redacted] ownership of the petitioner.

In rebuttal, counsel for the petitioner submitted the following documents:

1. A March 5, 2002 affidavit stamped and sealed by the Lishui City Foreign Trade & Economic Bureau stating that it transferred $60,000 to the petitioner on behalf of [redacted] n April 1996;
2. A March 5, 2002 statement by [redacted] indicating that it had resolved to transfer its funds to the petitioner using the names of two individuals. The statement noted in particular that the president of [redacted] transferred $120,000 to the petitioner in the

middle of January 1997 and the general manager of [redacted] (the beneficiary) transferred $286,650 to the petitioner in two installments also in the middle of January 1997;

3. An October 8, 199[redacted] "Decision of the Board of Directors" acknowledging the problems of government restrictions on the transfer of funds abroad from the company and authorizing the chairman of the board and the general manager (the beneficiary) to transfer $400,000 o[redacted] funds to the petitioner under their names;
4. The beneficiary's March 20, 2002 affidavit stating that he was authorized to wire $120,000 to the petitioner on January 21, 1997 and $166,500 to the petitioner also on January 21, 1997;
5. A statement by a second individual, [redacted] chairman of the board, stating that he transferred, in his name, $120,000 of his company's funds to the petitioner on January 22, 1997;
6. Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Returns for 1997, 1998, 1999, 2000, and 2001;
7. A California Corporation Commissioner's Notice of Transaction dated February 18, 1998 showing the petitioner's common stock sold for a total offering of $90,000;
8. Four of [redacted] business licenses showing it was established as a China-Hong Kong joint venture and was licensed to conduct business from July 1992 to July 2003. The four business licenses were dated April 1994, April 1995, April 1996, and April 1997.

Counsel explained that China did not allow non-state owned companies to transfer funds abroad; but did allow the transfer of funds abroad by state-owned enterprises and individuals. Counsel asserted that [redacted] ransfer of funds through a state-owned enterprise and individuals was the only way [redacted] could fund the petitioner. Counsel contends that the documents submitted establish that it was [redacted] funds that purchased the stock issued by the petitioner. Counsel also acknowledges a clerical error on the stock ledger and states that the stock ledger should show that two stock certificates were issued to [redacted] for 900 total shares. Counsel further explains the stock ledger was completed sometime after the date of incorporation. Counsel suggests that the date on the stock ledger should be May 1996, a few days after the initial transfer of funds.

The director acknowledged receipt of the above-listed documentation but found that the documentation was not convincing, credible, or definite. The director also questioned the petitioner's veracity, noting that counsel's explanations regarding [redacted] methodology of transferring funds appeared to attempt to circumvent Chinese regulations. The director observed, however, that he was unaware of Chinese regulations prohibiting the transfer of funds to the United States rather than just regulating the flow of funds outside of China.

On appeal, counsel for the petitioner asserts that the documentation provided in rebuttal is sufficient to establish [redacted] ownership of the petitioner. Counsel points out that the petitioner's IRS Forms 1120 consistently state that [redacted] is the petitioner's 100 percent owner. Counsel also provides a translated copy of regulations issued by the Bureau of Foreign Currency of the Chinese government. Counsel contends that these regulations discourage the investment by private enterprises in foreign companies. Counsel claims that

whether the regulations are proper or not, it is reasonable [redacted] would use individuals to invest in a foreign country.

Counsel's assertions are not persuasive. The record contains inconsistencies regarding the purchase of the petitioner's stock and the inconsistencies have not been adequately explained. For example, counsel suggests that the stock ledger should show that the petitioner was initially capitalized with $90,000 in April 1996, the date of the first wire transfer to the petitioner. However, the first wire transfer from a party unrelated to the [redacted] the claimed parent company, is only for $60,000. The remaining wire transfers, occurring seven months later, do not appear to correlate with the issuance of any stock.

In addition, [redacted] October 8, 1996 board resolution to transfer $400,000 to the petitioner in the names of its chairman of the board and general manager does not result in action for three months. Further, the petitioner's actual January 1997 bank statement shows federal wire transfers deposited to the petitioner originating from:

1. The beneficiary in the amount of $119,985 on January 21, 1997;
2. Another individual in the amount of $119,985 on January 22, 1997;
3. The beneficiary in the amount of $109,985 on January 23, 1997; and
4. The beneficiary in the amount of $166,635 on January 29, 1997.

The total amount the beneficiary and the foreign entity's chairman transferred in January 1997 is significantly more than the $400,000 allegedly authorized by [redacted] to be transferred on its behalf.

The AAO examined the petitioner's IRS Forms 1120, Schedule L and observes that the petitioner has consistently indicated that its common stock is valued at $90,000. This sum does not correlate with the initial capitalization of $60,000 in April 1996 allegedly through an unrelated third company. Moreover, the third party company's affidavit indicates that "in order to assist this kind of enterprises to seek business development of foreign trade" and also "because of the company's management reasons" it transferred $60,000 to the petitioner. These general statements are not sufficient to substantiate the legitimacy of the transaction to invest funds in the petitioner for another unrelated party.

The valuation of the petitioner's common stock also does not correlate with the more than $500,000 transferred to the petitioner by the beneficiary and another individual. Instead, the transfer of funds by the beneficiary and another individual suggest that the beneficiary, based upon the funds transferred in his name, actually owns and controls the petitioner.

The regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities for purposes of this visa classification. *Matter of Church Scientology International*, 19 I&N Dec. 593 (BIA 1988); *see also Matter of Siemens Medical Systems, Inc.*, 19 I&N Dec. 362 (BIA 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982). As general evidence of a petitioner's claimed qualifying relationship, stock certificates alone are not sufficient evidence to determine whether a stockholder maintains ownership and control of a corporate entity. The regulations specifically allow the director to request additional evidence in appropriate cases. *See*

8 C.F.R. § 204.5(j)(3)(ii). As ownership is a critical element of this visa classification, the director may reasonably inquire beyond the issuance of paper stock certificates into the means by which stock ownership was acquired.

In this matter, counsel for the petitioner asserts that the petitioner has issued only 900 shares of stock. Counsel claims that the 900 shares were issued to the beneficiary's foreign employer for the amount of $90,000. However, counsel's explanation and the summary translation of the regulation issued by the Bureau of Foreign Currency of the Chinese government are not sufficient to resolve the contradictory evidence in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The record does not establish that the foreign entity in this matter supplied the funds necessary to purchase an interest in the petitioner. The documents created in March 2002 such as the affidavit purportedly issued by the Lishui City Foreign Trade & Economic Bureau on March 5, 2002 and the March 5, 2002 statement discussing [redacted]ctober 8, 1996 "Decision of the Board of Directors" were created four years after the petition was filed. Documents such as these can be created to support actions never taken. Likewise the beneficiary's affidavit that he was authorized to wire $120,000 and $166,500 on the foreign entity's behalf is suspect as the foreign entity does not mention or explain that the beneficiary also transferred $109,000 to the petitioner on January 23, 1997. Further, the statement made by [redacted]hairman that he also was authorized to transfer the foreign entity's funds to the petitioner is not notarized. The record does not contain information establishing that the petitioner has been authorized to conduct business using other names, such as "CML Enterprises, Inc." and "T.P.I. Merchandising, Inc." The lack of information regarding these two distinct businesses also obfuscates the relationship(s) that may or may not exist between the petitioner and any foreign entity.

The petitioner has not provided independent, credible evidence that the foreign entity purchased an interest in the petitioner and thus created a qualifying relationship with the beneficiary's foreign employer. The director's initiation of an overseas investigation was limited to an exploration of the beneficiary's employment history with the foreign entity. The response does not provide evidence that a qualifying relationship exists or does not exist between the foreign entity and the petitioner.

The second issue in this proceeding is whether the petitioner established that the beneficiary's assignment would be in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day to day operations of the activity or function for which the employee has authority. A first line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily

i. directs the management of the organization or a major component or function of the organization;

ii. establishes the goals and policies of the organization, component, or function;

iii. exercises wide latitude in discretionary decision making; and

iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In a letter submitted with the petition, counsel for the petitioner stated that the beneficiary had been transferred to the United States to serve as the president of the petitioner. Counsel indicated the beneficiary's responsibilities as:

> He is responsible for the overall operation of the subsidiary: authorize the establishment of departments and positions, approve overall human resource planning, coordinate the work of departments, select and approval [sic] the selection of executive staff, formulate and approve promotional campaigns.

Counsel also indicated that the beneficiary coordinated with the parent company and traveled between two countries. Counsel stated that the beneficiary "is in charge of designing company's long-term plan and reviewing market research reports."

The record includes the petitioner's organizational chart showing the beneficiary as president, a vice-president, a general manager, an accounting manager, a marketing manager, a secretary, two assistants, one salesperson, and one delivery person. Counsel also listed the petitioner's sales in 1998 at approximately $892,000.

On October 31, 2000, the director requested further evidence in connection with the beneficiary's I-485 adjustment of status interview. The director requested the petitioner's current organizational chart listing the beneficiary and the names, titles, educational degrees, and brief job descriptions of the beneficiary's subordinate employees. The director also requested the petitioner's California Forms DE-6, Employer's Quarterly Wage Reports, for 1997, 1998, and 1999.

The petitioner's organizational chart showed the beneficiary as president, a vice-president who was also in the position of operation manager, a warehouse deputy manager, three staff, two salespersons, a truck driver, and three workers. The chart also showed an unfilled position of financial manager and that one of the "staff" worked part-time and the three "workers" worked part-time.

The petitioner repeated the beneficiary's job description initially provided. The petitioner indicated that: (1) the vice-president assisted the president, managed and directed the petitioner's development activities, exercised authority in regard to hiring, firing, training, delegating assignments, and conducted performance reviews as well as performed the operation manager's duties; (2) the two sales personnel were responsible for sales and shows, the workers were responsible for inventory control and packaging, and the part-time staff person was responsible for import customs declaration and compiling accounting statements; (3) one of the full-time "staff" was responsible for market access, supervising sales, and preparing for shows; the second full-time "staff" was responsible for payroll, payables and receivables, debt and credit; (4) the warehouse deputy manager was responsible for management of the warehouse department, for inventory control, mailing, return and repair service; (5) the driver was responsible for local delivery.

In the Notice of Intent to Revoke, the director listed the above information, observed that the beneficiary attended to some managerial duties, and questioned how the beneficiary could exercise wide latitude in discretionary decision-making when the beneficiary also traveled between China and the United States coordinating with the parent company. The director determined that the record did not establish that the beneficiary's assignment would be primarily managerial or executive.

In rebuttal, counsel for the petitioner contended that the beneficiary had left the United States twice for a total of 104 days since entering the United States in June 9, 1998. Counsel also noted the petitioner's increase in volume of trade from $702,561 in 1997 to $3,198,674 in 2001. Counsel asserted that the beneficiary managed the whole company including the operation, warehouse, and financial departments. Counsel added that the beneficiary:

> Mainly supervises and controls the work of the managers of these three department[s]; he designs and supervises the implementation of the whole human resources plan including hiring and firing; he designs and supervises the long term business plan and formulates the long and short term goal and policy, strategy and technique of business for the whole company; he only receives general supervision and directions from executives of the parent company and reports to the board of directors. In general, his position is involved [sic] significant authorities over generalized policy of the U.S. subsidiary as a whole and substantially all his duties are at managerial and executive level.

The director observed that the beneficiary's passport shows his entry in the United States in June 1998 and again in June 1999 but does not show a departure date. The director determined that the petitioner had not demonstrated that the beneficiary's position would include executive control and authority over a function, department, subdivision, or component of the company or that the beneficiary would manage a subordinate staff of professional, managerial, or supervisory personnel who would relieve him from performing non-qualifying duties. The director concluded that the petitioner had not overcome the grounds for revocation.

On appeal, counsel for the petitioner repeats the assertions made in rebuttal to the Notice of Intent to Revoke and asserts that substantially all of the beneficiary's duties are at the managerial and executive level.

Counsel's assertions are not persuasive. When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 204.5(j)(5). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.* A beneficiary may not claim to be employed as a hybrid "executive/manager" and rely on partial sections of the two statutory definitions.

In this matter the petitioner has provided a vague and nonspecific description of the beneficiary's duties that fails to demonstrate what the beneficiary does on a day-to-day basis. For example, the petitioner states that the beneficiary's duties include "overall operation of the subsidiary," and "designs and supervises the long term business plan and formulates the long and short term goal and policy, strategy and technique of business for the whole company," and "authorize[s] the establishment of and coordinate[s] departments and positions." The petitioner did not, however, define the goals, policies, strategies, or plans. The petitioner did not detail the efforts involved in coordinating the departments. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting

the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

Further, rather than providing a specific description of the beneficiary's duties, the petitioner generally paraphrased portions of the statutory definition of managerial and executive capacity. *See* section 101(a)(44)(A) and (B) of the Act, 8 U.S.C. § 1101(a)(44)(A) and (B). For instance, the petitioner depicted the beneficiary as "supervise[ing] and control[ling] the work of the managers of these three department[s]," and "hiring and firing," and "receiv[ing] general supervision and directions from executives of the parent company and report[ing]to the board of directors." However, conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava, supra; Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Although the petitioner asserts that the beneficiary is managing a subordinate staff, the record does not establish that the subordinate staff is composed of supervisory, professional, or managerial employees. *See* section 101(a)(44)(A)(ii) of the Act. A first-line supervisor will not be considered to be acting in a managerial capacity merely by virtue of his or her supervisory duties unless the employees supervised are professional. Section 101(a)(44)(A)(iv) of the Act. Although the petitioner identifies subordinate positions with managerial titles, the work performed by these individuals does not comport with primarily managerial or supervisory duties. Because the beneficiary is supervising a staff of non-professional, non-managerial, and non-supervisory employees, the beneficiary cannot be deemed to be primarily acting in a managerial capacity.

Moreover, the AAO notes that when the petition was filed, the petitioner employed only one sales person and claimed to generate over $800,000 in business volume. The record does not demonstrate who in the organization performed the sales duties. The AAO must conclude that the beneficiary and other employees identified as "managers" were performing sales duties. Further, the petitioner's California Forms DE-6 show that at various times since the approval of the petition to the date of the rebuttal the petitioner employed as few as four employees. The record does not establish that the beneficiary was relieved or would be relieved from performing primarily the duties of a first-line supervisor or other non-qualifying tasks. An employee who primarily performs the tasks necessary to produce a product or to provide services is not considered to be employed in a managerial or executive capacity. *Matter of Church Scientology International*, 19 I&N Dec. 593, 604 (Comm. 1988).

The AAO will not discuss the beneficiary's travel outside the United States. The AAO does not find, in this matter, that the beneficiary's travel to China significantly impacts his employment with the petitioner.

However, the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary's assignment for the petitioner was and would continue to be in a primarily managerial or executive capacity. The petitioner has not overcome the director's conclusion in this matter.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.